

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
RUDOLPH ROSSI,

Petitioner,

-against-

ISRAEL RIVERA,

Defendant.
----- X

06-CV-1001 (ARR)

NOT FOR PRINT OR
ELECTRONIC
PUBLICATION

OPINION & ORDER

ROSS, United States District Judge:

Petitioner Rudolph Rossi, proceeding pro se, filed the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on March 6, 2006. By opinion dated July 21, 2006, this court dismissed the petition as time-barred and declined to issue a certificate of appealability (“COA”). Petitioner appealed, and the Second Circuit also denied petitioner a COA by mandate dated January 12, 2007 and issued April 19, 2007. Petitioner’s affidavit in support of the present motion states that he was not notified of the appellate decision and, as a consequence, was time-barred from seeking a writ of certiorari.

Petitioner now moves this court pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure for an order vacating its prior judgment and order denying petitioner’s application for a COA. Petitioner argues that the court was incorrect in its assessment that he had not made a substantial showing of the denial of a constitutional right. He bases this argument on the Supreme Court’s recent decision in Padilla v. Kentucky that failure to advise a criminal defendant of the adverse immigration consequences of a plea may constitute ineffective assistance of counsel. See 130 S.Ct. 1473, 1486 (2010). The petition in this case raised claims similar to those considered in that case.

Padilla notwithstanding, petitioner's motion lacks merit. Because this court dismissed the petition on procedural grounds, rather than on the merits, petitioner was entitled to a COA only if he could show both "[1] that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and [2] that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 478, 484-85 (2000). The Second Circuit has already ruled that petitioner failed to show that jurists of reason would find it debatable whether this court was correct in its procedural ruling. Petitioner's present motion shows no reason disturb these rulings.

Accordingly, petitioner's motion for an order vacating this court's prior judgment and issuing a certificate of appealability is denied.

SO ORDERED.

/Signed by Judge Ross/

Allyne R. Ross
United States District Judge

Dated: December 10, 2010
Brooklyn, New York

Service List

Pro Se Petitioner:

Rudolph Rossi

87A9513

Great Meadow Correctional Facility

11739 State Route 22, Box 51

Comstock, NY 12821